

## **EXHIBIT “C”**

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Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 TRAVELERS CASUALTY & SURETY  
4 and TRATAROS CONSTRUCTION  
INC.,

5 Plaintiffs,

6 v.

07 CV 6915 (DLC)

7 THE DORMITORY AUTHORITY OF THE  
8 STATE OF NEW YORK and TDX  
CONSTRUCTION CORP.,

9 Defendants.

10 -----x

New York, N.Y.  
February 29, 2008  
11:30 a.m.

11 Before:

12  
13 HON. DENISE L. COTE,

14 District Judge

15 APPEARANCES

16 DREIFUSS BONACCI & PARKER, LLP  
17 Attorneys for Plaintiffs Travelers & Trataras  
18 BY: JOANNE BONACCI  
ELI ROGERS

19 HOLLAND & KNIGHT, LLP  
20 Attorneys for Defendant The Dormitory  
21 BY: STEPHEN BRETT SHAPIRO  
TIMOTHY FROESSEL

22 ZETLIN & DECHIARA  
23 Attorneys for Defendant Kohn Pederson Fox  
BY: LOUIS J. DENNIS

24 SEGAL MCCAMBRIDGE SINGER & MAHONEY, LTD  
25 Attorneys for Defendant Specialty Construction  
BY: ROBERT RIGOLOSI

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1 GOLDBERG SEGALLA LLP  
Attorneys for Defendant Dayton Superior  
2 BY: SUZIN RASO  
3 GREEN & LAVELLE  
Attorneys for Defendant National Union Insurance  
4 BY: ERIKA ALJENS  
5 GOGICK BYRNE & O'NEILL  
Attorneys for Defendant Weidlinger & Arquitectonica  
6 BY: STEPHEN SCHRECKINGER  
7 KALB & ROSENFELD P.C.  
Attorneys for Defendant TPS Jordan Panel  
8 BY: TERRENCE J. O'CONNOR  
9 THELAN REID BROWN RAYSMAN & STEINER LLP  
Attorneys for Defendant CBC Systems USA  
10 BY: JOHN FEDUN  
11 CARROLL MCNULTY & KIM LLC  
Attorneys for Defendant US Fire Insurance  
12 BY: JOHN P. DEFILIPPIS  
13 TOMPKINS MCGUIRE WACHENFELD & BARR LLP  
Attorneys for Defendant Lumberman's Mutual/Kemper  
14 BY: MICHAEL S. MILLER  
15 MOUND COTTON WOLLAN & GREENGRASS  
Attorneys for Defendant Allied  
16 BY: DIANA E. GOLDBERG  
17 ZICHELO & MCINTYRE LLP  
Attorneys for Defendant Carolina Casualty  
18 BY: VINCENT J. ZICHELO  
19 RIKER DANZIG SCHERER HYLAND PERRETTI LLP  
Attorneys for Defendant Harleysville Mutual  
20 BY: TRACEY K. WISHERT  
21 O'CONNOR REDD  
Attorneys for Defendant Bartec Ind.  
22 BY: JEREMY PLATEK  
23 L'ABBATE BALKAN COLAVITA & CONTINI LLP  
Attorneys for Defendant Cosentini  
24 BY: MARTIN A. SCHWARTZBERG  
25 GENNET KALLMANN ANTIN & ROBINSON P.C.  
Attorneys for Defendant Great American

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BY: DONALD GEORGE SWEETMAN

MELITO & ADOLFSSEN P.C.  
Attorneys for Defendant Zurich

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MORGAN MELHUISE MONAGHAN ARVIDSON ABRUTIN & LISOWSKI  
Attorneys for Defendant Ohio Casualty

BY: JAMES F. MULLEN

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1 (Case called)

2 MS. BONACCI: Joanne Bonacci and Eli Rogers, on behalf  
3 of plaintiffs.

4 MR. SHAPIRO: Steven Shapiro, from Holland and Knight  
5 for the Dormitory Authority, the State of New York and TDx  
6 Construction Corporation.

7 Timothy Froessel is with here with me.

8 MR. DENNIS: Louis Dennis, for Kohn Pederson Fox.

9 MR. RIGOLOSI: Robert Rigolosi for party defendants  
10 Specialty Construction Brands TA Tech, TEC.

11 MS. RASO: Susan Raso, for third-party defendant,  
12 fifth party plaintiff.

13  
14 MS. ALJENS: Erica Aljens, National Union Fire  
15 Insurance Company.

16  
17 MR. SCHRECKINGER: Stephen Schreckinger. I represent  
18 two of the recently added third-party defendants.

19 MR. O'CONNOR: Terrence O'Connor, for third party  
20 defendant Jordan Panel Systems Corporation.

21 MR. FEDUN: John Fedun, for third-party defendant, LPI  
22 USA.

23 MR. DEFILLIPIS: John DeFilippis for fourth party  
24 defendant United States Fire Insurance Company.

25 MR. MILLER: Michael S. Miller on behalf of fourth

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1 party defendant Lumberman Mutual.

2 MS. GOLDBERG: Diane Goldberg, on behalf of defendant  
3 Allied World Insurance Company Inc.

4 MR. ZICHELO: Vincent Zichello, for fourth party  
5 defendant Carolina Casualty Insurance.

6 MS. WISHERT: Tracey Wishert, on behalf of fourth  
7 party defendant Harleysville Insurance Company.

8 MR. WASKO: Robert Mark Wasko, cocounsel for Caroline.

9 MR. PLATEK: Jeremy Platek, for --

10 MR. SCHWARTZBERG: Barton Schwartzberg for the  
11 third-party defendant.

12 MR. SWEETMAN: Donald G. Sweetman, for Great American  
13 Insurance Company, fourth party defendant.

14 MR. STEPHENS: Dwight Stephens.

15 MR. MULLENS: James Mullen -- fourth party defendant  
16 Ohio Casualty Insurance Company.

17 THE COURT: Thank you all.

18 This conference had two slated purposes. One was to  
19 hear whether this was going to be a jury or a nonjury trial.  
20 And the second was to talk about the remainder of the discovery  
21 process including limitations on depositions and the scheduling  
22 of those depositions.

23 Mr. Shapiro, should I be turning to you for a report?

24 MR. SHAPIRO: I believe Ms. Bonacci has the report.

25 THE COURT: Ms. Bonnaci, keep your voice up, please.

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1 MS. BONACCI: Yes, your Honor.

2 With respect to the jury trial I had spoken to my  
3 client about what your Honor had proposed a method as handling  
4 as a bench trial, and both Travelers and Trataras agreed to  
5 that, so we would waive our jury demand. However, since that  
6 point in time I believe KPF had since placed in the jury  
7 demand, so I'm not sure what will occur with that.

8 THE COURT: I need an attorney to take charge here.

9 Now, Ms. Bonacci, will you be that lawyer or --

10 MS. BONACCI: Sure.

11 THE COURT: -- do I have some other candidate to take  
12 charge of really making sure that all counsel in the case are  
13 contacted and we can have a report with respect to the parties'  
14 positions on issues today and going forward?

15 MS. BONACCI: Yes, your Honor, I will do that.

16 THE COURT: Okay. Good. So I think the bottom line  
17 is we don't have universal agreement that this should be a  
18 nonjury trial; am I right?

19 MS. BONACCI: I believe the KPF counsel would answer  
20 to that. He is the only other one that demanded a jury. We  
21 waived our demand.

22 THE COURT: I am going to assume based on your report,  
23 Ms. Bonnaci, that this is a jury trial case and I'll give you a  
24 week to contact all counsel and to advise me if that has  
25 changed.

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1 Good. With respect to deposition discovery,  
2 Ms. Bonnaci.

3 MS. BONACCI: Your Honor, we have a proposal that we  
4 would seek the Court's approval on with respect to depositions.  
5 Essentially, we have approximately 30 witnesses that are  
6 necessary parties to be deposed. Currently, your Honor, you  
7 had 17 different law firms that are representing parties in the  
8 case. However, KPF has recently filed a third party complaint  
9 adding an additional eight parties. However, one of those  
10 parties is my client, so it would be an additional seven  
11 counsel that would be coming into the case giving us a total of  
12 24 law firms.

13 And therefore because of that we would ask your Honor  
14 to extend the current requirements in the Federal Rules to  
15 allow us to have additional depositions and five days per  
16 witness for those depositions. It truly does limit the amount  
17 of time that the different attorneys can ask questions and then  
18 we can come to an agreement amongst all of us assuming all  
19 parties are represented in the case to see how many hours each  
20 specific counsel will be allotted.

21 THE COURT: Are you saying to me, Ms. Bonnaci, that  
22 all counsel agree that each witness should be subject to  
23 examination for five days?

24 MS. BONACCI: The only counsel, your Honor, that have  
25 discussed this are the main parties to the case which would be



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1 KPF Daz and TDF and my client the additional parties are just  
2 coming into the case and being represented now. They  
3 presumably don't have the same amount of time constraint on  
4 witnesses. It's mainly the main parties to the case that are  
5 going to be taking the lion's share of the depositions. A lot  
6 of the fourth party defendants, your Honor, are joint carriers  
7 and the like.

8 THE COURT: So, I take it also the list of 30  
9 witnesses does not include a survey of all the parties to know  
10 if this agreement with respect to 30 witnesses is something  
11 that I can rely on with respect to all the parties in the case?

12 MS. BONACCI: Yes, your Honor.

13 THE COURT: I'm sorry. Yes, what?

14 MS. BONACCI: It would not include the new parties who  
15 have not made appearances yet in accordance with KPF's third  
16 party client that was filed and you also have Dayton Superior  
17 who has also filed a fifth party complaint against Croschetti.

18 THE COURT: So, it includes everyone else? It's the  
19 agreement of everyone except the most newly added parties?

20 MS. BONACCI: Well, your Honor what I would like is  
21 the same one week that you've allotted for the jury trial to  
22 get any objections that the other counsel would have to proceed  
23 in that fashion, but the main parties were fine with five days  
24 per witness and the 30 witnesses.

25 THE COURT: Do you have a list of the 30 witnesses by

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1 name?

2 MS. BONACCI: No, your Honor, we do not.

3 THE COURT: How did you arrive at the number 30 then?

4 MS. BONACCI: We each went through our Rule 26  
5 disclosures and approximated who we could, what a good pool of  
6 the number would be for us to agree to.

7 THE COURT: Where do we stand on document discovery?

8 MS. BONACCI: Your Honor, in connection with the  
9 earlier matter that was filed, the majority of the parties had  
10 conducted document discovery. For the additional parties to  
11 conduct document discovery they would have either served  
12 document demands. We've received a few mainly in connection  
13 with the fourth party, the third party complaint that my client  
14 filed and those parties still have time for one another to  
15 respond to their document demands.

16 For the major parties, your Honor, in the first  
17 instance we've all opened up our files for examination and a  
18 lot of those examinations have already occurred prior to this  
19 action being instituted and prior to the mediation going  
20 forward.

21 MR. SHAPIRO: Your Honor, if I may there are still a  
22 fair --

23 THE COURT: Is it Mr. Shapiro?

24 MR. SHAPIRO: Yes, that's right.

25 There is still a fair amount of document discovery

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1 left to occur. There was some documents exchanged in advance  
2 of a mediation that was between some of the parties in this  
3 case. There are still a number of document demands outstanding  
4 and I know that there's some document issues that may arise.  
5 We're hoping to work those out. It would certainly be  
6 premature to bring that to the Court's attention at this time.  
7 So you are aware of the universe of documents, it's probably  
8 very similar to what you encountered in the Marriott case. I  
9 would say with four or \$500 the equivalent of four or five  
10 hundred bankers boxes to exchange the parties' location and I  
11 think that there are probably ten to 15 parties that need to  
12 commence during that review at this point in time. However,  
13 Ms. Bonnaci is correct, a lot of document discovery has already  
14 occurred.

15 THE COURT: I think that it probably is, it may be  
16 helpful in this case to group the defendants and have lead  
17 counsel with respect to groups of defendants so that not too  
18 great a burden is placed on Ms. Bonnaci.

19 And, Mr. Shapiro, I think can't be one of those as the  
20 owner or representing the owner of the site at least for all  
21 the parties here that represent subcontractors.

22 Do I have a volunteer? Someone?

23 MS. RASO: I'll volunteer.

24 THE COURT: Is this Ms. Raso?

25 MS. RASO: Yes, it is, your Honor.

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1 THE COURT: Thank you, Ms. Raso. And you represent  
2 Dayton Superior; is that right?

3 MS. RASO: Yes, your Honor.

4 THE COURT: And what was Dayton Superior's position in  
5 the project?

6 MS. RASO: We supplied materials to Trataras.

7 THE COURT: Okay. And would you feel comfortable then  
8 acting as a sort of liaison counsel for the subcontractors who  
9 worked on the project?

10 MS. RASO: Yes.

11 THE COURT: Thank you. That's very kind of you to  
12 offer.

13 And then, Ms. Bonnaci, you represent in essence  
14 Trataras as I understand it and Travelers, of course, but are  
15 the other major entities here the engineering firms and  
16 architects, are they the other major entities that would be  
17 unaccounted for in this subdivision of parties?

18 MS. BONACCI: Your Honor, there's actually, to help  
19 your grouping better it would probably help if you had a lead  
20 counsel for the third party complaint that was instituted by  
21 the architect against his sub-consultants because that's  
22 another eight parties that was recently brought in on February  
23 1st.

24 THE COURT: Okay. And is that you, Mr. Dennis, who  
25 brought those parties in?

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1 MS. RASO: Yes, your Honor, it is.

2 THE COURT: So, Mr. Dennis, I am going to ask you to  
3 be the lead counsel with respect to all those adversaries you  
4 just brought into the case so that when we're consulting on  
5 these procedural issues with respect to how to manage this  
6 litigation, Mr. Shapiro and Ms. Bonnaci and Ms. Raso can call  
7 you and you'll be able to represent that you have solicited the  
8 opinions of that group that you brought into this litigation.  
9 And I'm not asking you to advocate, obviously, for those  
10 defendants, but to have taken responsibility for collecting  
11 their positions on the issue at hand and be able to describe  
12 that.

13 Would you be willing to do that, sir?

14 MR. DENNIS: That's fine, your Honor. One point of  
15 clarification, two of the parties that we brought in are  
16 actually subcontractors, so I don't know LDL and Jordan Panel  
17 whether they would fall into the subcontractor group or into  
18 our group.

19 THE COURT: Would you discuss that with Ms. Raso and  
20 resolve that so that there's clarity?

21 MR. DENNIS: Sure.

22 THE COURT: And who else then don't we have covered?

23 MR. SHAPIRO: Your Honor, I believe the insurance  
24 company defendant should have a representative as well.

25 THE COURT: But who do the insurance companies

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1 represent? Who are their insureds?

2 MR. SHAPIRO: Ms. Bonnaci brought them in. I'll let  
3 her --

4 MS. BONACCI: Your Honor, I would think unless  
5 Ms. Raso would disagree with continuing to volunteer to do that  
6 it would serve best that there would be one lead counsel in  
7 connection with our third party complaint which was Travelers  
8 and Trataras third party complaint bringing in essentially what  
9 we would call the flooring parties. It's in connection with  
10 Dagny's allegation against us.

11 We in turn brought in the various insurance carriers  
12 for subcontractors as well as any subcontractor or product  
13 supplier in connection with the flooring. So your grouping in  
14 the litigation is Travelers as the surety suing the architect,  
15 the owner and the construction manager.

16 We then have the owner making a complaint against the  
17 contractor Trataras. Trataras which is my client then files  
18 the third party action bringing in all of the insurance  
19 carriers and what I will just call the flooring parties in  
20 general and then --

21 THE COURT: But the insurance carriers for who?

22 MS. BONACCI: A party entitled Croschetti which is a  
23 floor contractor.

24 THE COURT: Okay. Shouldn't the insurance companies  
25 who represent the flooring subcontractors be in the same pool

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1 of people that have to consult with each other? Why would you  
2 separate those into two separate groups?

3 MS. BONACCI: I wouldn't, your Honor. Mr. Shapiro had  
4 indicated the insurance party should be represented. But they  
5 in my view of how we, I instituted the lawsuit they fall within  
6 the independent group for the third party, so they're part of  
7 the flooring parties of which Dayton Superior who has  
8 volunteered to coordinate all those defendants has, is part of.

9 MR. SHAPIRO: I don't have any objection to  
10 Ms. Bonnaci's proposal.

11 THE COURT: Ms. Raso.

12 MS. RASO: I don't have any objection either. That's  
13 fine.

14  
15 MS. ALJENS: Erica Aljens.

16 Some of the insurance companies that are listed in  
17 this are actually insurance of Trataras and not of subflooring  
18 subcontractors so I just wanted to clarify that.

19 THE COURT: Well, Trataras should be coordinating with  
20 its own insureds. So I am going to put the burden on you,  
21 Ms. Bonnaci, to write me a letter within one week. You will  
22 advise me and I don't want to know, if there's one party in  
23 this case that wants a jury trial. I don't need to show who it  
24 is. I don't want to know who it is. They have a right to a  
25 jury trial, so be it. So if you've found out from everyone

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1 that they all want to go nonjury, great. You can represent  
2 that. If you don't have unanimity, great. You can represent  
3 that.

4 Secondly, I want your letter to describe who are going  
5 to be the lead counsel and hopefully we get a group of three or  
6 four attorneys and I want all parties allocated among those  
7 three or four attorneys an agreement from those three or four  
8 attorneys that they're willing to take on what is really just a  
9 procedural role to help coordinate the litigation here.

10 So, I want to know how that's organized and in  
11 specificity which parties fall in which groups? Which lawyer's  
12 responsible for that group and their contact information for  
13 me.

14 We're not moving the cut-off date for fact discovery.  
15 It's December 14 and it will remain December 14. The cut-off  
16 for expert discovery remains May 2nd, next year. We're not  
17 moving that either. There's play in the joints with respect to  
18 interim scheduling but those two dates are not moving.

19 MR. SCHRECKINGER: Can I just speak to that issue. We  
20 represent architect -- two of third-party defendants have just  
21 recently brought in. We haven't appeared in the action yet or  
22 decide whether or not we're going to file a motion to dismiss.  
23 I was going to ask if we could have a little bit of leeway with  
24 the scheduling order which we weren't a party to maybe get a  
25 couple of months in addition to the dates that you had already



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1 ordered.

2 THE COURT: Your application is denied.

3 MR. SCHRECKINGER: Thank you, your Honor.

4 THE COURT: Your welcome.

5 MR. SCHRECKINGER: There is a significant amount of  
6 document discovery that we -- complete. We didn't participate  
7 in the full document discovery. We haven't looked at any of  
8 plaintiff's documents or the few hundred boxes of documents  
9 that are available. So there is a significant amount of  
10 discovery that does have to be completed. Like I said we  
11 haven't answered.

12 THE COURT: Good. So I'd answer or move promptly. I  
13 won't extend any answer or move dates. You have your 20 days.  
14 Get to it. And also I'd start looking at the discovery  
15 materials.

16 MR. SCHRECKINGER: We will do that, your Honor, but I  
17 believe we have 60 days to appear. We were served on counsel.  
18 I believe it's 60 days to appear in the action since it was  
19 served on the attorneys.

20 THE COURT: Good. If you want to use your time that  
21 way that's fine with me.

22 MR. SCHRECKINGER: Thank you.

23 THE COURT: You are welcome.

24 So, I am unlikely to approve a five day deposition of  
25 30 witnesses. I would have hoped we would be much further

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1 along today with respect to the names of witnesses, the  
2 deponents and a schedule with respect to when they will be  
3 deposed.

4 And more precise way of handling the time limits here,  
5 there may be a couple of witnesses that need extended  
6 depositions, but let's assume, given the number of parties,  
7 that you don't have to come to me for a deposition of two days.  
8 And if you want a deposition longer than two days you are going  
9 to have to have agreement of all the parties in the case.  
10 There is, obviously, not going to be any duplicative  
11 questioning.

12 Let me just describe the rules that apply during a  
13 deposition. None of this is new or startling to anyone. There  
14 are no instructions not to answer except on the ground of  
15 privilege. There are no speaking objections. If you have an  
16 objection it's simply the word "objection" and one word such as  
17 "form".

18 There are no breaks except prescheduled breaks. So if  
19 you've scheduled a mid morning, a luncheon and a midafternoon  
20 break to take place at roughly a certain time; fine, but no  
21 other breaks.

22 And I would expect that groups of defendants will  
23 coordinate their questioning so that we're not going to have 24  
24 questioners but it'll depend witness by witness what makes  
25 sense.

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1 And depending on how late in the year you start these  
2 depositions you are going to have to double and triple to track  
3 them, so you should make those arrangements.

4 So, in order to pin down in more detail what's  
5 happening with these depositions so we could have a more  
6 productive conference, how much time do you need, Ms. Bonnaci?

7 MS. BONACCI: Your Honor, with all the parties that  
8 are currently in the case I could coordinate I believe within  
9 five days and decide if there was any witness we felt would go  
10 longer than two days so that we could present them to your  
11 Honor. My only complication to that if KPF's third party  
12 defendant that they -- then I wouldn't be able to include them  
13 in that unless they're all here.

14 Perhaps, Mr. Dennis could let us know if all the  
15 counsel that he brought in are here today.

16 THE COURT: Mr. Dennis, are they?

17 MR. DENNIS: Your Honor, there are five parties that  
18 are represented here today. There are two that are not.

19 THE COURT: Thank you. So I'll take a letter from  
20 Ms.-Bonnaci Monday March 24, with respect to the scheduling of  
21 depositions and whether there is agreement. And to the extent  
22 that there is any disagreement or a need to be heard with  
23 respect to any of the fact discovery issues implicated by the  
24 scheduling of depositions I'll take a responsive letter from  
25 any counsel by March 28. That responsive letter should be no

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1 longer than two pages.

2 I don't remember if we had a transcript of our first  
3 conference, a court reporter, did we?

4 MS. BONACCI: I don't think so, your Honor.

5 THE COURT: We have one today.

6 So, let me just repeat for the benefit of everyone  
7 some things that I covered in the last conference and should  
8 there be anyone who is not represented here they'll be order to  
9 order a transcript and read it. So I think that is the most  
10 efficient way to go. We, obviously, have a written scheduling  
11 order that's been issued and that's docketed and available to  
12 everyone. But with respect to the conduct of discovery,  
13 counsel are required to meet and confer with each other to  
14 resolve any discovery disputes.

15 If you want discovery you have to be diligent about  
16 it. We have a schedule. If you are not getting cooperation  
17 from another side, another party in the case and you don't act  
18 it's going to be too late. The burden is on you if you want  
19 certain discovery to act and be diligent in the case. This is  
20 a very old case. It's been pending for a long time even though  
21 it has a recent docket number, so we're moving forward.

22 If there is a meet and confer process and you are  
23 unable to resolve the discovery issue you may write me a letter  
24 no longer than two pages and I'll get the relevant parties on  
25 the phone and give you an opportunity to be heard and give you

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1 a ruling. I don't want letters unless I've given you  
2 permission for a letter. I don't want letters longer than two  
3 pages.

4 Obviously, because the litigation is so -- with so  
5 many parties if we have telephone conference calls so you all  
6 don't have to come into court and I will try to conduct this  
7 litigation that way. If at all possible it's really going to  
8 be important that if we have those telephone conference calls  
9 that no one interrupt someone else who is speaking, that before  
10 you speak you identify yourself by name so the record's clear  
11 and we know who is speaking up. I don't know your voices and I  
12 won't be able to identify you otherwise. And, again, don't  
13 interrupt an attorney and don't interrupt me if I'm speaking  
14 otherwise we are not going to be able to conduct those phone  
15 calls which I hope would make it unnecessary to bring you all  
16 into court again for an in court conference.

17 Do any counsel who are here today have questions about  
18 the procedures we will follow during the fact or expert  
19 discovery period?

20 So, Ms. Bonnaci, you'll circulate this list of the  
21 lead counsel for the various groups and contact information and  
22 I am going to ask those lead counsel who will be roughly four  
23 in number to act as sort of a clearing house for their group's  
24 positions on various procedural issues, so the burden on  
25 Ms. Bonnaci can be lessened somewhat as she's trying to figure

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1 out what dates work and what the parties' position on who needs  
2 to be deposed etc.

3 I am hoping that a status letter from Ms.~Bonnaci by  
4 March 24 will give her the time she needs to consult with all  
5 of parties to the litigation so we can have a more comfortable  
6 and defined schedule with respect to depositions.

7 Is there anything else that we need to do today?  
8 Counsel.

9 MR. O'CONNOR: Jordon has not yet appeared in this  
10 refiled case. But there is an issue that I've raised in the  
11 past. Since we are getting back into this litigation now and  
12 we're still at the pleading stage now is the time to raise it.  
13 There is a serious conflict of interest in this case by the law  
14 firm that is respecting both Daz knee and TDX in this case. If  
15 you read the complaint there are allegations of active  
16 negligence against TDX which is Daz knee's construction  
17 manager. Now, Daz is not pursuing any cross claims against TDX  
18 and we're dealing here with public funds.

19 Now, why are they not pursuing the cross claims?  
20 They're represented by the same law firm. When I raised the  
21 issue in the past I was told that both parties knowingly  
22 consent to waive the conflict. But the law is when you are  
23 dealing with the public fist you are very limited in waiving  
24 conflicts of interest.

25 Basically, the rule if it has a bad appearance you

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1 can't do it. If you look at the deal that was made here so TDX  
2 now is being given a free pass by Daz knee with public funds  
3 and one law firm in the middle of it. This simply is not  
4 allowable. It's a conflict of interest and the public tax  
5 payers are the ones that are bearing the loss on this to the  
6 extent that Daz knee is not passing through any losses to TDX  
7 then that means the public is paying for the exercise of this  
8 conflict.

9 THE COURT: Well, I am absolutely happy to have this  
10 resolved through motion practice sooner rather than later, but  
11 isn't it possible that the owner of the project and its  
12 construction manager worked so closely together that they would  
13 have no viable cross claims because they were fully  
14 knowledgeable of what the other was doing? I mean that  
15 conceivable. Wouldn't you agree, counsel?

16 MR. O'CONNOR: Yes, your Honor, I would. But it's  
17 also conceivable that the allegations of the complaint could be  
18 accepted by the jury that the construction manager's negligence  
19 caused a great deal of the delays, impacts and cost over-runs  
20 on this project.

21 THE COURT: But if Daz fee as the owner of the project  
22 couldn't take advantage of that negligence because it was  
23 working hand and glove with TDX then it couldn't bring that  
24 claim successfully in court?

25 MR. O'CONNOR: Your Honor, the whole purpose of hiring

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1 TDX is for TDX to manage the project. That's what they got  
2 paid millions of dollars for here.

3 THE COURT: True. I understand that there was a role  
4 for a construction manager in that project, but I am just  
5 talking about the legal issue in terms of whether or not there  
6 is a conflict such that the same law firm couldn't represent  
7 both parties.

8 Do you want an opportunity to make a motion with  
9 respect to that issue, or not?

10 MR. O'CONNOR: Your Honor, I have no intent on making  
11 a motion of the issue. I feel I am duty bound to bring it to  
12 the Court's attention.

13 THE COURT: OK. Thanks. I appreciated you bringing  
14 that issue to my attention. There is no need to schedule  
15 motion practice since no party intends to bring a motion in  
16 that regard and I see nothing based on my present knowledge of  
17 the case to suggest I need to sua sponte investigate that  
18 issue. Okay.

19 Good. Anything else?

20 MR. SHAPIRO: Your Honor, just this is being  
21 transcribed. Daz fee disagrees with the Mr. O'Connor.  
22 (inaudible). I won't respond in detail to this issue at this  
23 point in time.

24 THE COURT: Well, conflict issues are something that  
25 should be sorted out earlier rather than later in a case. So



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1 if any party wishes to bring a motion with respect to the  
2 conflict issue let's set a schedule for that. So we don't  
3 leave that issue dangling, so to speak. Any motion should be  
4 brought by March 14, opposition March 28, reply April 4.

5 MR. SHAPIRO: Thank you, your Honor.

6 And for the record, there is no conflict as you might  
7 imagine. This is a common practice. There are many counsel.  
8 Several counsel in this case who are representing more than one  
9 party and this is not an issue that involves an ethical  
10 conflict, whatsoever, and if anybody wishes to bring a motion  
11 I'd be happy to respond to it.

12 THE COURT: Well, I am not inviting motions and I am  
13 not saying that a motion must be brought by any party. I just  
14 want to preserve everyone's rights in this regard.

15 Counsel.

16 MR. SWEETMAN: Several of the insurers had filed  
17 summary judgment motions that were before Judge Baer in the  
18 last action, primarily focused on an issue concerning late  
19 notice or no notice until they had been sued. It's primarily a  
20 legal matter, your Honor. And in view of the very extensive  
21 but expansive discovery I know that my clients would ask to be  
22 permitted to file a summary judgment motion along those lines  
23 at the earliest possible time.

24 THE COURT: Okay. You don't need permission from me  
25 to file a motion that the Federal Rules of Civil Procedure give

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1 you the right to file. I don't have premotion conferences. So  
2 if you have a motion you wish to bring preliminary summary  
3 judgment motion that you believe is right it's not dependent  
4 only discovery or not dependent on discovery that's yet to be  
5 taken, feel free to bring such a motion. I would suggest what  
6 you do is discuss a proposed schedule with whoever the motion  
7 impacts and who will be opposing or responding to the motion  
8 and just get me a stip with a proposed schedule.

9 As everyone knows in this district the default rule  
10 under our Southern District local rules in civil cases is two  
11 weeks to oppose and one week to reply to a motion. It's my  
12 customary practice to allow you three weeks to oppose and one  
13 week to reply in almost any motion schedule I set for a complex  
14 motion.

15 So, anything along those lines is not going to be  
16 looked at twice by me. I'll be happy to so order the schedule  
17 and I try to accommodate, also a little premature, but things  
18 like Thanksgiving and Christmas breaks and that elongates a  
19 briefing schedule if we get into that part of the year,  
20 counsel.

21 MR. SCHWARTZBERG: This issue came in front of Judge  
22 Baer and I'll bring it up again. I would request permission to  
23 supplemental interrogatories beyond those permitted at local  
24 rules to ask KPF identify the specific design claims against my  
25 client.

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1 THE COURT: Well, counsel, I just want to check, but I  
2 would be amazed if the local rules didn't give you enough scope  
3 as they are now given all the interrogatories that everybody  
4 has served or will be serving in this case. Okay. Help me  
5 find quickly if you could, the rule to which you are referring.

6 MR. SCHWARTZBERG: I am not familiar with the specific  
7 section. I do recall reading it.

8 THE COURT: It could be 33.3. Let me see if this is  
9 the one you are referring to.

10 Unless otherwise ordered by the Court at the commence  
11 of discovery interrogatories will be restricted to those  
12 seeking names of witnesses with knowledge of information  
13 relevant to the subject matter, the computation of damages,  
14 insurance agreements, physical evidence, etc.

15 During discovery interrogatories other than those may  
16 be served if they are a more practical method of obtaining the  
17 information sought than a request for production or a  
18 deposition or ordered by the Court at the conclusion of  
19 discovery or at least 30 days prior to the discovery cut-off  
20 interrogatories seeking the claims and contentions may be  
21 served.

22 So you want permission to serve an interrogatory  
23 seeking claimant's contentions at this stage?

24 MR. SCHWARTZBERG: Correct.

25 THE COURT: Is there opposition? There is no

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1 opposition?

2 MR. DENNIS: I would just ask that if the Court is  
3 going to make that order that it be extended to KPF to inquire  
4 to Dagny well with respect to those types of claims.

5 THE COURT: Any objection?

6 MR. SHAPIRO: No objection, your Honor. I would not  
7 have an objection to permitting any party who asked for  
8 contention of interrogatories at the outset of this case.

9 THE COURT: Any objection? Hearing no objections,  
10 contention interrogatories which are covered by Local Civil  
11 Rule 33.3 (C) may be posed now.

12 Any other issue?

13 MS. RASO: We recently impleaded fifth party defendant  
14 GM Newshell Seto. We were notified by their attorney to their  
15 in bankruptcy, so we are withdrawing. We would like you to  
16 have you sign a voluntary notice of dismissal.

17 THE COURT: Thank you. Just provide it to my clerk.  
18 Appreciate it.

19 MS. RASO: One less party.

20 MS. BONACCI: Your Honor, just one clarification.

21 THE COURT: Yes, Ms. Bonnaci.

22 MS. BONACCI: I am to write two letters to your Honor.  
23 The first one is within one week to identify whether or not  
24 we've all come to agreement as to the jury trial. And also the  
25 lead counsel, so to speak, and then the second letter is by the

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1 24th and that is a deposition schedule of witnesses that we  
2 believe extend beyond two days and would it also include those  
3 whose depositions would fall within two days. I just want to,  
4 didn't want to misunderstand.

5 THE COURT: Sure. It is the parties' agreement,  
6 hopefully, with respect to the scheduling of all the  
7 depositions so you can organize the case.

8 MS. BONACCI: Thank you, your Honor.

9 THE COURT: Good. Thank you all. Appreciate it.

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